

ORDINANCE NO. 16, 2019 SERIES

AN ORDINANCE AMENDING SECTIONS 98.02 AND 98.03(A)(3) OF THE CITY OF FRANKFORT CODE OF ORDINANCES REGARDING SMOKING REGULATIONS TO EXPAND THE DEFINITION OF “SMOKING” TO INCLUDE E-CIGARETTES AND RELATED PRODUCTS AND ADD EXCEPTIONS REGARDING THESE PRODUCTS

WHEREAS, the City of Frankfort (“City”) has an existing ordinance recognizing and preventing the dangers of secondhand smoke in public places; and

WHEREAS, electronic cigarettes have been determined by the Food and Drug Administration (“FDA”) to contain not only nicotine, but also detectable levels of known carcinogens and toxic chemicals posing risk to bystanders breathing in the aerosol emitted by the devices; and

WHEREAS, a 2018 U.S. Surgeon General’s Advisory reported that e-cigarette use has become an epidemic among our nation’s young people documenting a 78% increase in the use of e-cigarettes among high school students; and

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) are investigating a multistate outbreak of lung injury associated with use of e-cigarette, or vaping products, with 1,080 cases and 18 deaths confirmed as of October 1, 2019 with case and death numbers continuing to rise; and

WHEREAS, 861 cities and counties across America and 30 in Kentucky have already included electronic cigarettes in laws prohibiting smoking in public places; and

WHEREAS, the City of Frankfort has received a Resolution and presentation from the Franklin County Board of Health urging the Board of Commissioners to amend its current smoking ordinance to include prohibition of the use of electronic cigarettes or any electronic or heated smoking devices in public places; and

WHEREAS, in light of the information above regarding electronic cigarettes and related products, the City of Frankfort now wishes to amend its smoking regulations to include these products within the restrictions established by ordinance;

NOW THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Frankfort that Section 98.02 and Section 98.03(A)(3) of the City of Frankfort Code of Ordinances are hereby amended to read as follows:

§98.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

BUILDING. Any structure open to the public that is enclosed from the weather, whether or not windows or doors are open. If a person owns, leases or possesses only a portion of a building, the term building applies to the ownership, leasehold or possessory interest as well.

ELECTRONIC SMOKING DEVICE. Any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vapor pen, or under any other product name or descriptor.

DWELLING. Any place used primarily for sleeping overnight and conducting activities of daily living, including, without limitation, a hotel or motel room, but not a hotel or motel lobby, common elevator, common hallway or other common area. A dwelling does not include a hospital room, hospice facility, or nursing home room.

ENCLOSED AREA. An area that:

- (1) Is closed in overhead by a roof or other covering of any material, whether permanent or temporary; and
- (2) Has 40% or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary.

PRIVATE ORGANIZATION. An establishment which maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest and is not profit oriented.

RETAIL ELECTRONIC CIGARETTE STORE. A retail store devoted primarily to the sale of any electronic smoking device, including but not limited to e-cigarettes, e-cigars, e-pipes, e-hookah, or vapor pen, or under any other product name or descriptor and accessories, and in which the sale of other products is merely incidental. The sale of other such products shall be considered incidental if such sales generate less than 50% of the total annual gross sales.

RETAIL TOBACCO STORE. A retail store devoted primarily to the sale of any tobacco product, including but not limited to cigarettes, cigars, pipe tobacco and chewing tobacco, and accessories and in which the sale of other products is merely incidental. The sale of such other products shall be considered incidental if such sales generate less than 50% of the total annual gross sales.

TOBACCO WAREHOUSE. Any warehouse building offering tobacco for purchase at auction and meeting the definition established in KRS 248.010(4).

SMOKING. The act of inhaling or exhaling from, or the burning, heating or carrying of, any lighted or heated cigarette, cigar, pipe, other combustible tobacco product, or electronic smoking device or any oral smoking device including but not limited to an E-Cigarette or E-Cig. [~~Inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product.~~]

§98.03 PROHIBITION.

(A) No person shall smoke within any building except in one of the following locations:

(3) In a retail tobacco store or retail electronic cigarette store.

First Reading on the 25 day of November, 2019.

Final Adoption on the 16 day of December, 2019.

S/William I. May, Jr.
T/Mayor

Attest:

S/Chermie Maxwell
T/City Clerk

Summary: This ordinance amends Section 98.02 of the City of Frankfort Code of Ordinances to include electronic and oral smoking devices and related products within the restrictions established by the City's ordinance governing smoking in public places, by amending the definition of "Smoking" to include these products, and by adding definitions of "Electronic Smoking Device" and "Retail Electronic Cigarette Store." The ordinance further amends Section 98.03(A)(3) to add "retail electronic cigarette store" to the exceptions to the public smoking prohibition.

S/Laura Milam Ross
T/City Solicitor